

TEXT OF REGULATIONS

In the following text, underlining indicates amended or adopted language, strikethrough indicates deleted language.

Section 3040.1 is amended to read:

3040.1. Substance Abuse Programs for Inmates.

Subsections 3040.1(a) through 3040.1(b) are unchanged.

(c) Inmates with the following case factors shall not be placed in an SAP:

Subsection 3040.1(c)(1) and (2) are unchanged.

Subsection 3040.1(c)(3) is amended to read:

(3) Inmates who are members or associates of a prison gang, as certified by a ~~Criminal Activities Coordinator~~ Institution Gang Investigator;

Subsections 3040.1(c)(4) through 3040.1(i) are unchanged.

NOTE: Authority cited: 5058, Penal Code. Reference: section 5054, Penal Code.

Section 3341.5 is amended to read:

3341.5. Segregated Program Housing Units.

Special housing units are designated for extended term programming of inmates not suited for general population. Placement into and release from these units requires approval by a classification staff representative (CSR).

Subsections 3341.5(a) through 3341.5(b) are unchanged.

(c) Security Housing Unit (SHU). An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a SHU.

Subsection 3341.5(c)(1) through (c)(5) is unchanged.

Subsection 3341.5(c)(6) is amended to read:

(6) As provided at section 3378(f), an inmate categorized as inactive or validated as a dropout of a prison gang and placed in the general population may be returned to segregation based upon one reliable source item identifying the inmate as an currently active gang member or associate of the prison gang with which the inmate was previously validated. Current activity is defined as, any documented gang activity within the past six (6) years. The procedures described in this Article shall be utilized for the removal of the inmate from the general population, the review of the initial segregation order, and all periodic reviews of the indeterminate SHU term.

Subsection 3341.5(c)(7) through (c)(10) is unchanged.

NOTE Authority cited: section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; ~~and~~ *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

Section 3375 is amended to read:

3375. Classification Process.

(a) The classification process shall be uniformly applied, commencing upon reception of a person committed to the custody of the director and shall continue throughout the time the individual remains under the director's jurisdiction. Each inmate shall be individually classified in accordance with this article.

Subsections 3375(b) through 3375(g) are unchanged.

Subsection 3375(h) is amended to read:

(h) An inmate shall be provided a copy of all nonconfidential staff documentation and reports placed in the inmate's central file unless otherwise requested in writing by the inmate.

Subsections 3375(i) through 3375(k) are unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Wright v. Enomoto* (1976) 462 F.Supp. 397; ~~and~~ *Stoneham v. Rushen* (1984) 156 Cal.App.3d 302; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

Section 3375.3 is amended to read:

3375.3. CDC Classification Score Sheet, CDC Form 839, Calculation.

The factors and related numerical weights used to determine an inmate's preliminary score are listed below. Box numbers appear to the right, but refer to the first box on the left of each field.

(a) Background factors (Boxes 30-46):

Subsection 3375.3(a)(1) through 3375.3(a)(3) is unchanged.

Subsection 3375.3(a)(4) is amended to read:

(4) Street gang/disruptive group (Boxes 35-38). For the purpose of preliminary score evaluation, if there is information that the inmate is or has been involved in gang activity, enter 6 points in Box 35.

(A) Type of street gang/disruptive group code. Apply the code that most closely identifies the inmate's gang. Enter the appropriate alpha code in Boxes 36-37.

1. CR. Crip street gang/disruptive group.

2. BL. Blood street gang/disruptive group.
3. NH. Northern Hispanic street gang/disruptive group.
4. SH. Southern Hispanic street gang/disruptive group.
5. AS. Asian street gang/disruptive group.
6. BD. Bulldogs street gang/disruptive group.
7. WH. White supremacists, neo-nazi, skinheads, etc., street gang/disruptive group.
8. BK. Black street gang/disruptive group (not Crip nor Blood).
9. MC. outlaw motorcycle clubs street gang/disruptive group.
10. OT. other street gang/disruptive group not listed.

(B) Method of verification code (Box 38). Apply the code that is most indicative of gang activity. Enter the appropriate alpha code in Box 38:

1. Code A – Self admission. Staff shall document information about the inmate/parolee's self-admission and specific involvement with the gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

2. Code B – Tattoos and symbols. Body markings, hand signs, distinctive clothing, graffiti, etc., which have been identified by gang coordinators/investigators as being used by and distinctive to specific gangs. Staff shall describe the tattoo or symbol and articulate why it is believed that the tattoo is used by and distinctive of gang association or membership. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

3. Code C – Written material. Any material or documents evidencing gang activity such as the membership or enemy lists, constitutions, organization structures, codes, training material, etc., of specific gangs. Staff shall articulate why, based on either the explicit or coded content, the written material is reliable evidence of association or membership with the gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

4. Code D – Photographs. Individual or group photographs with gang connotations such as those, which include insignia, symbols, or validated gang affiliates. The date of the photograph shall be reasonably ascertained prior to any photo being relied upon for inclusion as a source item. No photograph shall be considered for validation purposes that is estimated to be older than six (6) years. Any photograph being utilized as a source item that depicts gang members shall be required to have at least one of the individuals previously validated by the department, or be validated by the department within six (6) months of the photograph's established or estimated date of origin. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

5. Code E – Staff information. Documentation of staff's visual or audible observations, which reasonably indicate gang activity. Staff shall articulate the basis for determining the content or conduct at issue is gang related. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

6. Code F – Other agencies. Information evidencing gang activity provided by other agencies. Verbal information from another agency shall be documented by the staff person who receives such information, citing the source and validity of the information. Staff shall document and

disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

7. Code G – Association. Information related to the inmate’s association with gang affiliates. Information including addresses, names, identities and reasons why such information is indicative of association with a prison gang or disruptive group. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

8. Code H – Offenses. The circumstances of an offense evidence gang activity such as an offense being between rival gangs, the victim is a verified gang affiliate, or the inmate’s crime partner is a verified gang affiliate. Staff shall articulate why an offense is gang related. Multiple sources of information relative to a single incident or offense will be considered one source of validation. Staff shall document and disclose this information to the inmate/parolee in written form that would not jeopardize the safety of any person or the security of the institution.

9. Code I – Legal documents. Probation officer’s report or court transcripts evidencing gang activity. Staff shall assure the document containing this information is disclosed to the inmate/parolee in written form that would not jeopardize the safety of any person or the security of the institution.

10. Code J – Communications. Documentation of telephone conversations, conversations between inmates, mail, greeting cards, notes, or other communication, including coded messages evidencing gang activity. Staff shall articulate why, based on either the explicit or coded content, the communication is reliable evidence of association or membership with the gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

Subsection 3375.3(a)(5) through 3375.3(f) are unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Wright v. Enomoto* (1976) 462 F Supp. 397; ~~and~~ *Stoneham v. Rushen* (1984) 156 Cal.App. 3d 302; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

Section 3378 is amended to read:

3378. Documentation of Critical Case Information.

Subsections 3378(a) through 3378(b) are unchanged.

Subsection 3378(c) is amended to read:

(c) Gang involvement allegations shall be investigated by a gang ~~coordinator~~/investigator or their designee.

(1) CDC Form 812-A or B shall be completed if an inmate/parolee has been verified as a currently active member/associate, inactive member/associate or dropout of a gang (prison gang or disruptive group) as defined in section 3000, or has safety concerns relating to gangs. Current activity is defined as any documented gang activity within the past six (6) years consistent with section 3341.5(c)(5).

(2) Information entered onto the CDC Form 812-A or B shall be reviewed and verified by ~~the a~~ gang ~~coordinator~~/investigator to ensure that the identification of an inmate/parolee as a currently active gang member or associate, ~~or as having safety concerns~~ is supported by at least three independent source items in the inmate/parolee's central file. The independent source items must contain factual information or, if from a confidential source, meet the test of reliability established in section 3321. The verification of an inmate/parolee identified as a gang dropout shall require a formal debriefing conducted or supervised by a gang ~~coordinator~~/investigator.

(3) A member is an inmate/parolee who has been accepted into membership by a gang. This identification requires at least ~~three~~ (3) independent source items of documentation indicative of actual membership. Validation of an inmate/parolee as a member of a prison gang shall require that at least one (1) source item be a direct link to a current or former validated member or associate of the gang.

(4) An associate is an inmate/parolee who is involved periodically or regularly with members or associates of a gang. This identification requires at least three (3) independent source items of documentation indicative of association with validated gang members or associates. Validation of an inmate/parolee as an associate of a prison gang shall require that at least one (1) source item be a direct link to a current or former validated member or associate of the gang.

(5) A dropout is an inmate/parolee who was either a gang member or associate and has discontinued gang affiliation. This identification requires the inmate/parolee to successfully complete the debriefing process.

(6) The verification of an inmate/parolee's gang identification shall be validated or rejected by the chief, office of correctional safety (OCS) assistant director, law enforcement and investigations unit (LEIU), or a designee.

(A) Prior to submission of a validation package to the OCS, or during the inactive status review process, the subject of the investigation shall be interviewed by the Institution Gang Investigator, or designee, and given an opportunity to be heard in regard to the source items used in the validation or inactive status review.

(B) Inmates shall be given written notice at least 24 hours in advance of the interview. The interview may be held earlier if the inmate waives, in writing, the 24-hour preparation period.

(C) All source items referenced in the validation or inactive status review shall be disclosed to the inmate at the time of notification. The inmate shall be given copies of all non-confidential documents unless otherwise requested in writing by the inmate. Confidential information used in the validation or inactive status review shall be disclosed to the inmate via a CDC Form 1030 (Rev. 12/86), Confidential Information Disclosure Form.

(D) The interview shall be documented and include a record of the inmate's opinion on each of the source items used in the validation. Staff shall record this information and provide a written record to the inmate within fourteen (14) calendar days and prior to submission of the validation package to OCS.

(E) The documented interview shall be submitted with the validation package to the OCS for consideration to approve or reject the validation. The documented interview shall be submitted with the inactive status review to the OCS for consideration of the inmate's continued current active or inactive status.

(F) The inmate's mental health status and/or need for staff assistance shall be evaluated prior to interview. Staff assistance shall be assigned per guidelines set forth in section 3318.

(G) The validation and/or rejection of evidence relied upon shall be documented on a CDC Form 128-B2 (Rev. 5/95) , Gang Validation/Rejection Review, and forwarded to the facility or parole region of origin for placement in the inmate/parolee's central file. Upon receipt of the CDC Form 128-B2, the Classification and Parole Representative or Parole Administrator I, or their designee, shall clearly note in some permanent manner upon the face of every document whether or not the item met validation requirements.

(7) The CDC Forms 812-A and 812-B shall be reviewed by a classification committee at each annual hearing and upon any review for transfer consideration. This shall be documented on a CDC Form 128-G (Rev. 10/89), Classification Chrono. Questionable gang identifications, notations, or new information shall be referred to ~~the~~ a gang coordinator/investigator for investigation.

(8) The determination of a gang identification shall reference each independent source item in the inmate/parolee's central file. The sources shall be based on the following criteria:

(A) Self admission. Staff shall document information about the inmate/parolee's self-admission and specific involvement with the gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(B) Tattoos and symbols. Body markings, hand signs, distinctive clothing, graffiti, etc., which have been identified by gang ~~coordinators~~/investigators as being used by and distinctive to specific gangs. Staff shall describe the tattoo or symbol and articulate why it is believed that the tattoo is used by and distinctive of gang association or membership. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(C) Written material. Any material or documents evidencing gang ~~affiliation~~ activity such as the membership or enemy lists, constitutions, organizational structures, codes, training material, etc., of specific gangs. Staff shall articulate why, based on either the explicit or coded content, the written material is reliable evidence of association or membership with the gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(D) Photographs. Individual or group photographs with gang connotations such as those; which include insignia, symbols, or validated gang affiliates. The date of a photograph shall be reasonably ascertained prior to any photo being relied upon for inclusion as a source item. No photograph shall be considered for validation purposes that is estimated to be older than six (6) years. Any photograph being utilized as a source item that depicts gang members shall require that at least one of the individuals be previously validated by the department, or validated by the department within six (6) months of the photograph's established or estimated date or origin. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(E) Staff information. Documentation of staff's visual or audible observations, which reasonably indicate gang ~~affiliation~~ activity. Staff shall articulate the basis for determining the content or

conduct at issue is gang related. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(F) Other agencies. Information evidencing gang affiliation provided by other agencies. Verbal information from another agency shall be documented by the staff person who receives such information, citing the source and validity of the information. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(G) Association. Information related to the inmate/parolee's association with validated gang affiliates. Information including addresses, names, identities and reasons why such information is indicative of association with a prison gang or disruptive group. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(H) Informants. Documentation of information evidencing gang affiliation from an informant shall indicate the date of the information, whether the information is confidential or non-confidential, and an evaluation of the informant's reliability. Confidential material shall also meet the requirements established in section 3321. Staff shall articulate how the information specifically relates to the inmate's involvement with the gang as a member or associate. The information may be used as a source of validation if the informant provides specific knowledge of how he/she knew the inmate to be involved with the gang as a member or associate. Multiple confidential sources providing information regarding a single gang related incident or behavior shall constitute one (1) source item. Exclusive reliance on hearsay information provided by informants will not be used for validation purposes. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(I) Offenses. Where the circumstances of an offense evidence gang affiliation such as where the offense is between rival gangs, the victim is a verified gang affiliate, or the inmate/parolee's crime partner is a verified gang affiliate. Staff shall articulate why an offense is gang related. Multiple sources of information relative to a single incident or offense will be considered one (1) source of validation. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(J) Legal documents. Probation officer's report or court transcripts evidencing gang ~~affiliation~~ activity. Staff shall assure the document containing this information is disclosed to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(K) Visitors. Visits from persons who are documented as gang "runners" or community affiliates, or members of an organization which associates with a gang. Staff shall articulate the basis for determining that the relationship between the visitor and inmate is gang related in nature or that the visitor and inmate engaged in a gang related discussion or gang conduct. Staff shall articulate the basis for identifying the visitor as associated with the gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(L) Communications. Documentation of telephone conversations, conversations between inmates, mail, notes, greeting cards, or other communication, including coded messages evidencing gang

affiliation activity. Staff shall articulate why, based on either the explicit or coded content, the communication is reliable evidence of association or membership with the gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(M) Debriefing reports. Documentation resulting from the debriefing required by (c)(2), above. Only information referencing specific gang related acts or conduct shall be considered as a source item. Multiple sources of information relative to a single gang related offense or activity shall be considered a single source of validation. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

Subsections 3378(d) through 3378 (e) are amended to make a non-substantive change to read:

(d) An inmate housed in the general population as a gang member or associate may be considered for review for inactive status when the inmate has not been identified as having been involved in gang activity for a minimum of two (2) years. Verification of an inmate's inactive status shall be approved or rejected by the ~~LEIU assistant director~~ OCS, chief or a designee. The approval or rejection shall be forwarded for placement in the inmate's central file. The Institution Classification Committee shall review and consider this determination at the next hearing and upon review for transfer consideration.

(e) An inmate housed in a security housing unit (SHU) as a gang member or associate may be considered for review of inactive status by the Departmental Review Board when the inmate has not been identified as having been involved in gang activity for a minimum of six (6) years. Verification of an inmate's inactive status shall be approved or rejected by the ~~assistant director, LEIU,~~ chief, OCS, or a designee. The approval or rejection shall be forwarded for placement in the inmate's central file.

Subsection 3378(f)(1) is renumbered to 3378(f) and amended to read:

~~(f)(1)~~ A gang member or associate, who is categorized as inactive or validated as a dropout of a prison gang and released from a SHU, may be removed from the general population or any other placement based upon one reliable source item identifying the inmate as an active gang member or associate of the prison gang with which the inmate was previously validated. The source item must identify the inmate as a gang member or associate based on information developed after his or her release from SHU. The source item need not be confidential, but must meet the test of reliability established at section 3321.

Subsection 3378(f)(2) is renumbered to 3378(g) and amended to read:

~~(f)(2)~~ (g) The procedures relating to the initial validation or rejection of gang members or associates as described in this section shall be followed when reviewing the present status of an inactive gang member or associate. Verification of an inmate's active status shall be approved or rejected by the ~~assistant director, LEIU,~~ chief, OCS, or a designee. This determination shall be forwarded for placement in the inmate's central file.

Subsection 3378(f)(3) is renumbered to 3378(h).

~~(f)(3)~~ (h) A classification committee is authorized to return an inmate to a SHU based upon the restoration of the inmate's gang status and a determination that the inmate's present placement endangers institutional security or presents a threat to the safety of others. As provided at section 3341.5, placement in a SHU requires approval by a classification staff representative.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054 and 5068, Penal Code, and *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v McCarthy* (9th Cir. 1990) 926 F.2d 800; ~~and~~ *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).